

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Peter J. Vitagliano and
Peter Vitagliano

DEFENDANTS

State Farm Mutual Automobile Insurance Company

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES) PA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Bloomington, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Allen L. Feingold, Esquire
The Windsor - Penthouse
1700 Benjamin Franklin Parkway
Philadelphia, PA 19103

ATTORNEYS (IF KNOWN)

Joseph M. Hankins, Esquire
Britt, Hankins, Schaible & Moughan
Two Penn Center, Suite 515
Philadelphia, PA 19102

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

breach of contract, bad faith

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Ubel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 851 HIA (1395f) <input type="checkbox"/> 852 Black Lung (923) <input type="checkbox"/> 853 DIWC/DIWW (405(g)) <input type="checkbox"/> 854 SSID Title XVI <input type="checkbox"/> 855 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

excess of \$50,000 JURY DEMAND: ☐ YES ☐ NO

Check YES only if demanded in complaint:

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

5/16/02



UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Peter J. Vitagliano, 2250 S. Buckner Street, Philadelphia, PA 19145
 Address of Plaintiff: Peter Vitagliano, 224 Greenwich Street, Philadelphia, PA 19147

Address of Defendant: One State Farm Plaza, Bloomington, IL 61710-0001

Place of Accident, Incident or Transaction: Philadelphia, PA.

(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases *INSURER*
(Please specify) *BAD FAITH*

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Joseph M. Hankins, Esquire, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 5/16/02

Joseph M. Hankins
Attorney-at-Law

20052

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

5/16/02

Joseph M. Hankins

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Peter J. Vitagliano
and
Peter J. Vitagliano

v.

CIVIL ACTION

NO.

State Farm Mutual Automobile Insurance
Company

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 53.2. ☒
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. ()

5/16/02
Date

Joseph M. Hankins, Esquire

Attorney-at-law

State Farm Mutual Automobile Ins. Co.

Attorney for

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER J. VITAGLIANO and	:	
PETER VITAGLIANO	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM MUTUAL	:	NO.
AUTOMOBILE INSURANCE CO.	:	
Defendant	:	

NOTICE OF REMOVAL

**TO: THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA:**

State Farm Mutual Automobile Insurance Co. ("State Farm"), Defendant in the above-captioned matter, hereby files a Notice of Removal of this case from the Court of Common Pleas of Philadelphia County, Pennsylvania, in which it is now pending, to the United States District Court for the Eastern District of Pennsylvania. This Notice is filed pursuant to 28 U.S.C.A. §1441, et seq., and in support thereof, Defendant states the following:

1. This action was commenced in the Court of Common Pleas of Philadelphia County, Pennsylvania, on December 17, 2001. This action is docketed in the State Court at December Term 2001, No. 2297. A copy of the initial State Court Complaint is attached hereto as Exhibit "A" and a copy of the Amended Complaint which was filed but

which is subject to Defendant's Motion for Non Pros is attached hereto as Exhibit "B".

2. Plaintiffs, Peter J. Vitagliano and Peter Vitagliano, are citizens of the Commonwealth of Pennsylvania. See Exhibits "A" at ¶¶1-2 and "B" at ¶¶1-2.

3. Defendant, State Farm, is a corporation incorporated under the laws of Illinois with its principal place of business located in Bloomington, Illinois. State Farm is a citizen of Illinois.

4. The above captioned matter was not originally removable because Plaintiffs' counsel stipulated that, at the time the Complaint was filed, the damages were not in excess of \$75,000. A true and correct copy of said Stipulation is attached hereto as Exhibit "C".

5. Despite the Stipulation signed by counsel for Plaintiffs, the Plaintiffs now contend that the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Notice of Removal is being filed within thirty (30) days of Plaintiffs' counsel filing and serving a Case Management Conference Memorandum (April 19, 2002), which represents that Plaintiffs' damages are approximately \$135,000. A true and correct copy of said Memorandum is attached hereto as Exhibit "D."

6. The Notice of Removal is being filed within one (1) year of the commencement of suit (December 17, 2001).

7. Defense counsel wrote to Plaintiffs' counsel to confirm the representation that the case exceeds the jurisdictional limit. A true and correct copy of the

correspondence of May 3, 2002 is attached hereto as Exhibit "E." Plaintiffs' counsel responded in his correspondence of May 7, 2002 that the amount in controversy had increased since the filing of the original Complaint and refused to amend his Case Management Conference Memorandum. A true and correct copy of said correspondence is attached hereto as Exhibit "F".

8. Copies of all the process, pleadings and Orders served upon or otherwise received by Petitioner are attached as Exhibits "A" (the Complaint), "B" (the Amended Complaint, which is still subject to Defendant's Motion for Non Pros attached as Exhibit "G") and "G". Exhibit "G" includes the docket entries, Defense counsel's Entry of Appearance, the Preliminary Objections to the Complaint, the Answer to the Preliminary Objections to the Complaint, the Court's Order of March 8, 2002 granting Defendant's Motion to Strike Objections to Requests for Admissions, the Court's March 20, 2002 Scheduling Order, the Court's Order of March 28, 2002 sustaining Defendant's Preliminary Objections, Defendant's Motion for Non Pros, the Court's Order of May 1, 2002 deeming Defendant's Motion to Strike Jury Demand moot due to the Court's March 28, 2002 Order and Stipulated Discovery Order.

9. The instant lawsuit is removable from State Court to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1332(a) (1), §1441 (a) and § 1446(b).

10. Pursuant to 28 U.S.C.A. § 1332, a cause of action may be removed to Federal Court when there is diversity of citizenship between the parties and the amount in

controversy exceeds \$75,000.

11. 28 U.S.C.A. § 1446 requires that the notice of removal be filed within thirty (30) days after the receipt by the defendant of the initial pleading or,

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by defendant, through service or otherwise, of a copy of an amended pleading, motion, order or **other paper** from which it may first be ascertained that the case is one which is or has become removable...(emphasis added).

12. 28 U.S.C. A. § 1446(b) does not define “other paper”. Further, the Third Circuit has yet to address what constitutes “other paper”. The statute, however, is clear that the time for removal begins to run when the defendant receives the requisite written notice of facts which make the case removable. Broderick v. Dellasandro, 859 F. Supp. 176, 178 (E.D. Pa. 1994).

13. The statutory requirement of a writing reduces disputes over knowledge of diversity or the amount in controversy and helps avoid later battles of credibility between opposing parties and lawyers. Id.

14. In sum, the purpose of the statute “is to commence the running of the thirty day period once the defendant receives actual notice that the case has become removable, **which may be communicated in a formal or informal manner.**” Broderick, 859 F. Supp. at 178, citing 14A Wright, Miller & Cooper, Federal Practice and Procedure, § 3732, at 520 (emphasis added).

15. Courts in the Third Circuit have held that correspondence between

attorneys, discovery documents, and a plaintiff's written statement to the court, for the purposes of taking the case out of arbitration, that the amount in controversy is over \$100,000 constitute "other paper" upon which removal can be based. Broderick, 859 F. Supp. at 180; Hessler v. Armstrong World Industries, Inc., 684 F. Supp. 393, 395 (D. Delaware, 1988); Cabibbo v. Einstein/Noah Bagel Partners, L.P., 181 F. Supp. 2d 428, 433 (2002); Textile Chemical Co. v. Aetna Casualty and Surety, 1997 WL 537408, *2 (E.D. Pa. 1997).

16. In this case, diversity exists because Plaintiffs are and have, at all relevant times, been citizens of the Commonwealth of Pennsylvania. Further, State Farm is and has, at all relevant times, been a corporation existing under the laws of the State of Illinois with its principal place of business located in Bloomington, Illinois.

17. Further, the amount in controversy exceeds \$75,000, exclusive of interest and costs, as is evidenced by Plaintiffs' Case Management Conference Memorandum, which was filed with the Court, in which they represented to the Court and to opposing counsel the following:

5. State the amount of damages claimed by Plaintiff:
 - (a) Direct Approximately \$10,000
 - (b) Consequential \$25,000
 - (c) Other \$100,000

See Exhibit "D" at p. 2.

18. Therefore, Plaintiffs are claiming \$135,000 in damages which clearly exceeds the \$75,000 jurisdictional requirement.

19. Further, counsel for the Defendant notified Plaintiffs' counsel of this representation and informed him that he would be removing the case to Federal Court unless Plaintiffs' counsel amended this representation. See Exhibit "E".

20. In response to this correspondence, Plaintiffs' counsel informed Defense counsel that the damages have indeed increased beyond \$75,000. See Exhibit "F".

21. These documents clearly indicate that the amount in controversy is in excess of \$75,000.

22. Further, similar to the statement filed in Textile Chemical, the Case Management Conference Memorandum constitutes "other paper" upon which a removal can be based.

23. Pursuant to Foster v. Mutual Fire, Marine and Inland Ins. Co., 986 F.2d 48 (3d Cir. 1993), this document may even be considered a pleading for removal purposes because it is in writing and was filed with the Court.

24. Defendant has filed this Notice of Removal within thirty (30) days of the filing of Plaintiffs' Case Management Conference Memorandum on April 19, 2002 and within one (1) year of the commencement of the suit.

25. Under these circumstances, this Court has original jurisdiction over the instant controversy and Defendant respectfully requests that the state court action be removed to the federal forum.

WHEREFORE, Defendant respectfully requests that this action be removed from the Court of Common of Pleas of Philadelphia County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

BRITT, HANKINS, SCHAIBLE & MOUGHAN

BY: 

Joseph M. Hankins, Esquire

Attorney I.D. No. 20052

Elizabeth Luening Long, Esquire

Attorney I.D. No. 84845

BRITT, HANKINS, SCHAIBLE & MOUGHAN

Two Penn Center Plaza, Suite 515

Philadelphia, PA 19102

215-569-6900

Attorneys for Defendants

Date: 5/17/02

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER J. VITAGLIANO and	:	
PETER VITAGLIANO	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM MUTUAL	:	NO.
AUTOMOBILE INSURANCE CO.	:	
Defendant	:	

MEMORANDUM OF LAW

I. FACTS

This action was commenced in the Court of Common Pleas of Philadelphia County, Pennsylvania, on December 17, 2001. This action is docketed in the State Court at December Term 2001, No. 2297. A copy of the initial State Court Complaint is attached hereto as Exhibit "A" and a copy of the Amended Complaint (which is subject to a Motion for Non Pros) is attached hereto as Exhibit "B". Plaintiffs, Peter J. Vitagliano and Peter Vitagliano, are citizens of the Commonwealth of Pennsylvania. See Exhibits "A" at ¶¶1-2 and "B" at ¶¶1-2. Defendant, State Farm, is a corporation incorporated under the laws of Illinois with its principal place of business located in Bloomington, Illinois. State Farm is a citizen of Illinois.

The above captioned matter was not originally removable because Plaintiffs' counsel stipulated that, at the time the Complaint was filed, the damages were not in excess of \$75,000. A true and correct copy of said Stipulation is attached hereto as Exhibit "C".

Presently, however, the amount in controversy has exceeded \$75,000, exclusive of interest and costs. Plaintiffs' counsel filed and served a Case Management Conference Memorandum on April 19, 2002, which represents that Plaintiffs' damages are approximately \$135,000. A true and correct copy of said Memorandum is attached hereto as Exhibit "D".

Defense counsel wrote to Plaintiffs' counsel to confirm this representation. A true and correct copy of the correspondence of May 3, 2002 is attached hereto as Exhibit "E." Plaintiffs' counsel responded in his correspondence of May 7, 2002 that the amount in controversy had increased since the filing of the original Complaint and refused to amend his Case Management Conference Memorandum. A true and correct copy of said correspondence is attached hereto as Exhibit "F".

Copies of all the process, pleadings and Orders served upon or otherwise received by Petitioner are attached as Exhibit "G".

The instant lawsuit is removable from State Court to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1332(a) (1), §1441 (a) and § 1446(b).

II. LEGAL ARGUMENT

Title 28, U.S.C. § 1441 provides, in part, that,

- (a) Any civil action brought in the State Court of which the District Courts of the United States have original jurisdiction, may be removed by the defendant or defendants to the District Court of the United States for the district and the division embracing the place where such action is pending.

Pursuant to 28 U.S.C.A. § 1332, a cause of action may be removed to Federal Court when there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C.A. § 1446 requires that the notice of removal be filed within thirty (30) days after the receipt by the defendant of the initial pleading or,

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by defendant, through service or otherwise, of a copy of an amended pleading, motion, order or **other paper** from which it may first be ascertained that the case is one which is or has become removable...(emphasis added).

28 U.S.C. A. § 1446(b) does not define “other paper”. Further, the Third Circuit has yet to address what constitutes “other paper”. The statute, however, is clear that the time for removal begins to run when the defendant receives the requisite written notice of facts which make the case removable. Broderick v. Dellasandro, 859 F. Supp. 176, 178 (E.D. Pa. 1994). The statutory requirement of a writing reduces disputes over knowledge of diversity or the amount in controversy and helps avoid later battles of credibility between opposing parties and lawyers. Id. Although notice must be in writing, the statute does not require “service” of that notice in some formal, legal sense. Id. Notification may be “through service or otherwise”. 28 U.S.C.A. § 1446(b). In sum, the purpose of the statute “is to commence the running of the thirty day period once the defendant receives actual notice that the case has become removable, **which may be communicated in a formal or informal manner.**” Broderick, 859 F. Supp. at 178, citing 14A Wright, Miller & Cooper, Federal Practice and Procedure, § 3732, at 520 (emphasis added).

Several Courts in the Third Circuit have held that correspondence between attorneys constitutes “other paper” upon which removal can be based. Broderick, 859 F. Supp. at 180; Hessler v. Armstrong World Industries, Inc., 684 F. Supp. 393, 395 (D. Delaware, 1988). Further, discovery documents, such as answers to interrogatories, have been held to constitute “other paper” for purposes of removal. Cabibbo v. Einstein/Noah Bagel Partners, L.P., 181 F. Supp. 2d 428, 433 (2002). Additionally, a plaintiff’s written statement to the court, for the purposes of taking the case out of arbitration, that the amount in controversy is over \$100,000 is sufficient to put the defendant on notice of the amount in controversy requirement. Textile Chemical Co. v. Aetna Casualty and Surety, 1997 WL 537408, *2 (E.D. Pa. 1997).

In this case, Plaintiffs filed an action against Defendant in the Philadelphia County Court of Common Pleas, Commonwealth of Pennsylvania. Plaintiffs are and have, at all relevant times, been citizens of the Commonwealth of Pennsylvania. State Farm is and has, at all relevant times, been a corporation existing under the laws of the State of Illinois with its principal place of business located in Bloomington, Illinois. Thus, diversity of citizenship justifying removal exists.

Further, the amount in controversy exceeds \$75,000, exclusive of interest and costs. On April 19, 2002, the parties attended the Case Management Conference in the above captioned matter which was held before a Civil Case Manager, who acted on behalf of the Honorable Nitza Quinones Alejandro. See Exhibit “G”, Scheduling Order at ¶ 3. Pursuant to the Scheduling Order, counsel for both parties submitted to the Court and to each other

their Case Management Conference Memoranda at the Conference. See Exhibit “G”, Scheduling Order at ¶ 6. In Plaintiffs’ Case Management Conference Memorandum, they represented to the Court and to opposing counsel the following:

5. State the amount of damages claimed by Plaintiff:

(a) Direct Approximately \$10,000

(b) Consequential \$25,000

(c) Other \$100,000

See Exhibit “D” at p. 2. Therefore, Plaintiffs are claiming \$135,000 in damages which clearly exceeds the \$75,000 jurisdictional requirement. Further, counsel for the Defendant notified Plaintiffs’ counsel of this representation and informed him that he would be removing the case to Federal Court unless Plaintiffs’ counsel amended this representation. See Exhibit “E”. In response to this correspondence, Plaintiffs’ counsel informed Defense counsel that the damages have indeed increased beyond \$75,000. See Exhibit “F”.

This removal is being filed within one (1) year of the commencement of the suit (December 17, 2001).

These documents clearly indicate that the amount in controversy is in excess of \$75,000. Further, similar to the statement filed in Textile Chemical, the Case Management Conference Memorandum constitutes “other paper” upon which a removal can be based. The Case Management Conference Memorandum is not only in writing but it is a document filed with the Court. Pursuant to Foster v. Mutual Fire, Marine and Inland Ins. Co., 986 F.2d 48 (3d Cir. 1993), this document may even be considered a pleading for removal purposes because it is in writing and was filed with the Court. Further, counsels’ correspondence of

May 3, 2002 and May 7, 2002, confirms that the representation in the Memorandum is indeed correct. See Exhibits "E" and "F". Defendant has filed this Notice of Removal within thirty (30) days of the filing of Plaintiffs' Case Management Conference Memorandum on April 19, 2002. Under these circumstances, this Court has original jurisdiction over the instant controversy and Defendant respectfully requests that the state court action be removed to the federal forum.

III. CONCLUSION

For the above stated reasons, Defendant, State Farm, respectfully requests that this Honorable Court remove this action to the federal forum.

BRITT, HANKINS, SCHAIBLE & MOUGHAN

BY: 

Joseph M. Hankins, Esquire

Attorney I.D. No. 20052

Elizabeth Luening Long, Esquire

Attorney I.D. No. 84845

BRITT, HANKINS, SCHAIBLE & MOUGHAN

Two Penn Center Plaza, Suite 515

Philadelphia, PA 19102

215-569-6900

Attorneys for Defendants

Dated: 5/17/02

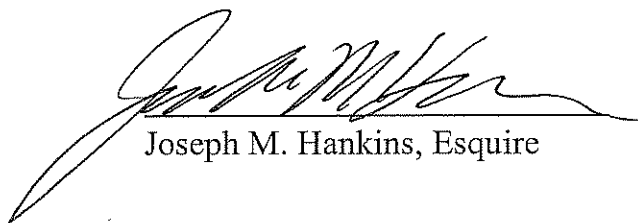
EXHIBITS NOT SCANNED

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Defendant's Notice of Removal was forwarded this day to the below listed counsel by First Class Regular U.S. Mail:

Allen L. Feingold, Esquire
The Windsor - Penthouse
1700 Benjamin Franklin Parkway
Philadelphia, PA 19103

Dated: 5/17/02



Joseph M. Hankins, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER J. VITAGLIANO and	:	
PETER VITAGLIANO	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM MUTUAL	:	NO. 02-CV-2954
AUTOMOBILE INSURANCE CO.	:	
Defendant	:	

FILED MAY 23 2002

NOTICE OF AFFIDAVIT OF FILING
CERTIFIED COPY OF NOTICE OF REMOVAL

TO THE CLERK OF COURT:

Please take notice of the attached Affidavit of Filing of the Certified copy of the Notice of Removal of Defendant State Farm Mutual Automobile Insurance Co. pursuant to 28 U.S.C. § 1441, et seq., with the Court of Common Pleas of Philadelphia County.

BRITT, HANKINS, SCHAIBLE & MOUGHAN

BY: Elizabeth Luening Long
Joseph M. Hankins
Elizabeth Luening Long
Attorneys for Defendant

Dated: 5/23/02

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER J. VITAGLIANO and	:	
PETER VITAGLIANO	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM MUTUAL	:	NO.
AUTOMOBILE INSURANCE CO.	:	
Defendant	:	

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

I, Elizabeth Luening Long, Associate of Britt, Hankins, Schaible & Moughan,
being sworn according to law, deposes and says that she filed a certified copy of
Defendant's Notice of Removal of the foregoing action to Federal Court, including the
Exhibit attached, with the Court of Common Pleas of Philadelphia County, Pennsylvania
on May 17, 2002.

Elizabeth Luening Long

Sworn to and Subscribed

before me this 23rd day

of May, 2002.

Anastasia Faracchio

NOTARY PUBLIC



BRITT, HANKINS, SCHAIBLE & MOUGHAN

BY: Joseph M. Hankins, Esquire

Attorney I.D. No. 20052

Elizabeth Luening Long, Esquire

Attorney I.D. No. 84845

Suite 515, Two Penn Center Plaza

1500 John F. Kennedy Boulevard

Philadelphia, PA 19102-1888

(215) 569-6904

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02 MAY 17 PM 3:44
PRO PROTHY

Attorney for Defendant,
State Farm Mutual Automobile
Insurance Company

PETER J. VITAGLIANO and

PETER VITAGLIANO

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
:
:
:

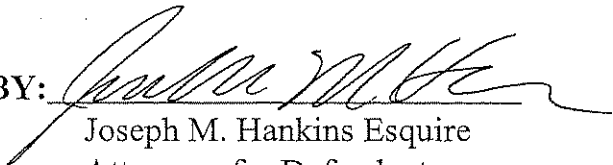
: DECEMBER TERM 2001
: NO. 2297
:

TO THE PROTHONOTARY:

Pursuant to 28 U.S.C. § 1446 (e), Defendant State Farm Mutual Automobile Insurance Company hereby files the attached certified copy of the Notice of Removal filed with the Clerk of Court of the Eastern District of Pennsylvania on the 17th day of May 2002.

BRITT, HANKINS, SCHAIBLE & MOUGHAN

BY:



Joseph M. Hankins Esquire

Attorneys for Defendant,

State Farm Mutual Automobile Insurance
Company

Dated: 5/17/02

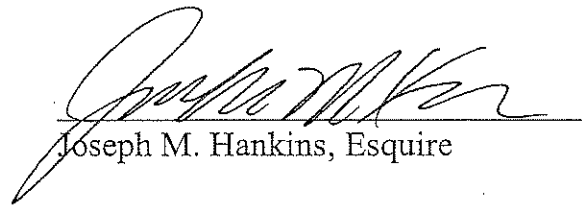
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Notice of Removal has been served,
this day, by regular mail as follows:

Allen L. Feingold, Esquire
The Windsor - Penthouse
1700 Benjamin Franklin Parkway
Philadelphia, PA 19103

Dated: _____

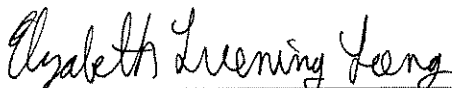
5/17/02


Joseph M. Hankins, Esquire

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Affidavit of Filing Certified Copy of Notice of Removal has been served, this day, by regular mail as follows:

Allen L. Feingold, Esquire
The Windsor - Penthouse
1700 Benjamin Franklin Parkway
Philadelphia, PA 19103


Elizabeth Luening Long, Esquire

Dated: 5/23/02